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Supreme Court of the United States

OCTOBER TERM, 1971

No. 71-1417

BOOSTER LODGE NO. 405,
INTERNATIONAL ASSOCIATION OF MACHINISTS
AND AEROSPACE WORKERS, AFL-CIO,
Petitioner,

versus

NATIONAL LABOR RELATIONS BOARD

- and -

THE BOEING COMPANY,
Respondents.

RESPONSE OF RESPONDENT, THE BOEING COMPANY, TO PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

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Booster Lodge No. 405, International Association of Machinists And Aerospace Workers, AFL-CIO (the Union), has petitioned the Court to issue a writ of certiorari to review the judgment of the United States Court of Appeals for the District of Columbia Circuit

entered in the above-entitled case on March 14, 1972. The opinion of the court below is reported at 79 LRRM 2443, and it is reproduced at pages 5a-33a of the Appendix to the Union's petition. The judgment of the Court of Appeals is found at pages 1a-4a of the Appendix to the Union's petition. The decision and order of the National Labor Relations Board is reported at 185 NLRB No. 23, and is found at pages 34a-35a of the Appendix to the Union's petition.

I. OPINIONS BELOW

On February 18, 1966, The Boeing Company filed an unfair labor practice charge with the National Labor Relations Board alleging the Union had violated Section 8(b) (1) (A) of the National Labor Relations Act[1] by threatening and imposing fines on employees of The Boeing Company who had crossed the Union's picket line and worked during the Union's strike against the Company during the period from September 15, 1965, to October 2, 1965. The Board's General Counsel issued a complaint and after a hearing a Trial Examiner's Decision issued. The General Counsel, the Union and the Company filed exceptions to the Decision. Thereafter, on August 27, 1970, the National Labor Relations Board issued its Decision and Order. (Petitioner's brief, pages 34a-36a).

The Labor Board decided that the Union violated Section 8(b) (1) (A) of the Act: (1) by fining those employees who had resigned from the Union before

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[1]29 U.S.C. Section 158 (b) (1) (A).

they returned to work during the strike, and (2) by fining those employees who had resigned after returning to work, to the extent that the fines were imposed for their working during the strike *after* their resignations (Union's petition, pages 10a; 33a; 42a-44a). The Labor Board further decided that the Union did *not* violate the Act: (1) by fining members for crossing the picket line to work during the strike who did not resign from the Union; and (2) by fining those employees who had resigned *after* returning to work during the strike for work they performed during the strike *prior* to their resignations. (*Ibid.*)

The Board further concluded, contrary to the contentions of The Boeing Company, that it was not the intent of Congress to have the National Labor Relations Board regulate the size of such disciplinary fines and establish standards with respect to their reasonableness, and it dismissed the claim that otherwise legal fines may be rendered violative of the Act if unreasonably large. (Union's petition, pages 10a; 42a).[2]

Both the Union and The Boeing Company filed petitions to review the Board's decision and order with the Court of Appeals for the District of Columbia Circuit, pursuant to 29 U.S.C. Section 160 (f).

With one exception, the Court below enforced the Board's decision and order. The Court below disagreed with the Board with regard to its duty to determine the reasonableness of the fines, stating that "The

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[2]One member dissented. (Union's petition, pages 42a; 58a-67a).

Board's belief that it does not have the obligation of examining the reasonableness of union fines in Section 8 (b) (1) (A) proceedings is based upon a clear misconception of the law and the Supreme Court's relevant decisions." (Union's petition, pages 22a-30a). The Court below remanded the case to the Labor Board for further consideration of the questions relating to the reasonableness of the fines imposed by the Union. (Union's petition, page 33a).

II. QUESTIONS PRESENTED BY THE PETITIONER

The questions, as presented by the Petitioner,[3] are:

> 1. Whether a member of a union may escape union discipline, exerted by the levy of a court-collectible fine, for violation of his union obligation to refrain from strike breaking by resigning from his union subsequent to the commencement of a strike and engaging in strike-breaking after his resignation.
>
> 2. Whether the National Labor Relations Board is empowered to determine the reasonableness of a fine assessed by a union against a member for violating its valid rule against strikebreaking.

The Union-Petitioner contends in effect that a member of a union may not escape discipline, particularly fines, for violation of a union rule prohibiting members from working behind a picket line during a strike, by

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[3]Petition, page 2.

resigning from his Union subsequent to the commencement of a strike and working after his resignation. It further contends that the National Labor Relations Board is without power to determine the reasonableness of a fine assessed by a Union against a member for violating its rule against crossing a picket line and working during a strike.

III. POSITION OF THE RESPONDENT, THE BOEING COMPANY

While not filing a brief in opposition to the Union's petition as provided for in Rule 24 of the Court's Rules, The Boeing Company neither acquiesces in nor agrees with the positions and contentions of the Union-Petitioner. In *The Boeing Company v. National Labor Relations Board and Booster Lodge No. 405, International Association of Machinists and Aerospace Workers, AFL-CIO,* October Term, 1971, No. * (filed May , 1972), The Boeing Company has petitioned that this Court issue a writ of certiorari to review the aforesaid judgment of the Court below, in which petition the question presented is as follows:

> Whether a union committed an unfair labor practice under Section 8(b) (1) (A) of the National Labor Relations Act and engaged in conduct to "restrain or coerce" employees in the exercise of their rights under Section 7 of the Act to "refrain from" concerted activities, where such union imposed fines on, and attempted to collect such fines from, employees

*The said petition was mailed to Court on May 26, 1972. The filing date and docket number is not yet known.

> who came through the Union's picket lines, regardless of whether or not such employees had resigned their union membership and regardless of whether or not the fines related to the period before, or the period after, resignation.

In the said petition, The Boeing Company argues that there are compelling reasons for re-examination and clarification of the Court's ruling with respect to union fines of members who return to work during a strike. More specifically, therein The Boeing Company is requesting the Court to reconsider and reverse its decision in *N.L.R.B. v. Allis-Chalmers Manufacturing Company*, 388 U.S. 175 (1967).

Should the Court grant the petition of The Boeing Company, and subsequently reverse *Allis-Chalmers* (as it did in a similar situation in *The Boy's Market, Inc. v. Retail Clerk's Union*, 398 U.S. 235 (1970), the questions presented by the Union-Petitioner become moot. If, however, the Court should grant the writ of certiorari prayed for by the Union-Petitioner, Respondent, The Boeing Company, respectfully reserves its right under Rule 41 of the rules of the Court to file a reply brief, setting forth fully why the Court below is correct in its opinion that the Board must, if such fines are to be permitted by the Court, determine and assess the reasonableness of such fines, and why under the facts and circumstances of the instant case, a union member may not be fined by violating a union rule against crossing a picket line and working for his employer during a strike, without regard to whether or not he resigns from the Union.

RESPECTFULLY SUBMITTED,

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MAY, 1972

CERTIFICATE OF SERVICE

In accordance with the provisions of Rule 33 of the Supreme Court Rules, I certify that I have caused copies of the foregoing Response of Respondent, The Boeing Company, To Petition For Writ of Certiorari To The United States Court Of Appeals For The District of Columbia Circuit to be served on the following persons by mailing three copies of same via air mail, postage prepaid:

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this day of May, 1972.

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